

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**May 6, 2008**

**The Rhode Island Ethics Commission held its 9th meeting of 2008 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, May 6, 2008, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair   James V. Murray**

**Barbara R. Binder, Vice Chair   Deborah M. Cerullo SSND**

**Ross Cheit, Secretary   J. William W. Harsch**

**Richard E. Kirby**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch.**

**At approximately 9:11 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open**

**Session held on April 8, 2008. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on April 8, 2008.**

**ABSTENTIONS: James V. Murray and Richard E. Kirby.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Jane A. Hayward, former Secretary of the Executive Office of Health and Human Services for the State of Rhode Island. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present.**

**Commissioner Binder suggested including in the response paragraph that the petitioner would be prohibited from appearing before the five agencies over which she had supervisory authority. Commissioner Cheit questioned whether the Commission should be addressing the adequacy of safeguards put in place by a private entity. Staff Attorney DeVault noted that the petitioner is requesting an opinion as to how the revolving door provisions apply to her in her private employment. Commissioner Cheit expressed that she is asking the Commission to pass on the provisions of her employment contract.**

Commissioner Cheit voiced his concern that the petitioner will be the CEO of an organization which appears before the agencies with whom she previously worked. He noted that the prior opinions cited in the draft opinion do not reflect the Commission passing on the terms of a private employment contract and questioned how the Commission would have the jurisdiction to police such provisions. Staff Attorney DeVault clarified that the petitioner is asking whether, given the precautions in place, she would violate section 5(e) and Regulation 5015(b). Commissioner Cheit expressed his belief that the petitioner is trying to take a job that violates 5(e). He noted that the Commission has been uncomfortable with these types of situations in the past and suggested that the Commission should not be ruling on the desirability of private employment arrangements.

Commissioner Cerullo asked for more specific information regarding the petitioner's subordinate who would represent the entity before the state. The petitioner replied that the individual is subject to her evaluation on an annual basis, but she is not due to be evaluated until early next year. In response to Commissioner Cheit, the petitioner affirmed that if any issue arose regarding the subordinate's employment it would come before her. In response to Commissioner Harsch, the petitioner stated that she sought an opinion in an effort to be transparent after serving more than thirty-four years in the public sector. She advised that she had reviewed prior advisory opinion and discussed the issue with a staff attorney, but she did not want to have

**someone file a complaint against her.**

**In response to Commissioner Harsch, the petitioner represented that she knew what the Health Center Association did before she went there and that she had previous contact with them in her official capacity. She noted that she accepted the private employment approximately six months after leaving her public position. In further response to Commissioner Harsch, the petitioner indicated that the issue had been raised in her mind prior to joining the private sector and thereafter. She stated that she had about a half dozen conversations with Staff Attorney DeVault. Staff Attorney DeVault confirmed their informal conversations, which began after the petitioner left state service, and noted that she did not render any advice on behalf of the Commission.**

**In response to Commissioner Kirby, the petitioner informed that she left state service in October 2007 and the CEO position was advertised on the website in early February 2008. She reiterated that she did not accept the employment until five months after retiring. Commissioner Kirby noted that the Commission cannot control what the petitioner's private employer does and cautioned against endorsing something it cannot control. He stated that the only way the petitioner would be in violation if she were to appear before her former agency or one of those she supervised within the one year period. The petitioner advised that the CEO has other roles, including advocacy before the federal government and managing federal**

grants. She stated that appearing before the state would only be a portion of the job.

Commissioner Cheit expressed his view that the revolving door provision does not anticipate that she would be able to take the job. Commissioner Binder stated that the public policy behind the revolving door is to prevent trading on personal connections developed in one's public position. Commissioner Cheit suggested that after one year the petitioner could do anything she wants. Commissioner Binder expressed her view that the one year period is appropriate and the barriers she created are sufficient to keep distance from people with whom she had relationships. Commissioner Cheit countered that the petitioner supervises the person who would be appearing before the state. Commissioner Binder stated that the situation is similar to that addressed in a recent opinion where the Commission found that a petitioner could work at the Jugan Residence but could not appear before her former agency.

Commissioner Cheit indicated that the problem here is that the petitioner is the CEO and it would be a fiction to suggest that the CEO could have distance. Commissioner Harsch voiced his agreement given that, while they may follow the rule temporarily, everyone knows that after one year the petitioner will be in charge and dealing with the agencies. Upon motion made by Chair Lynch and duly seconded by Commissioner Lynch to adopt the draft opinion, there

**was discussion.**

**Commissioner Kirby concurred with Commissioner Cheit that endorsing the petitioner's position now could create problems for the Commission later on. However, he questioned how the Commission would have any control over her conduct unless she appears before her former agency. Commissioner Kirby noted that the petitioner's thirty-four years of service dispels any notion that she was jumping into a new job due to her contacts, and he added that the position was advertised several months after she left her state employ. Commissioner Cerullo stated that she is inclined to agree with Commissioner Cheit regarding the petitioner being the CEO and overseeing the person who interacts with the state, and she also noted that appearance issues are involved. Upon the original motion, it was**

**VOTED: To adopt the draft opinion.**

**AYES: Barbara R. Binder and James Lynch, Sr.**

**NOES: James V. Murray, Ross Cheit, Deborah M. Cerullo SSND, J. William W. Harsch and Richard E. Kirby.**

**Chair Lynch advised that no opinion would issue due to a lack of five affirmative votes. He noted that the petitioner does not have the protection afforded by an opinion and must be vigilant not to violate**

**the Code or she could be subject to a complaint.**

**The next advisory opinion was that of Catherine Lynn, a member of the Smithfield Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Cheit, the petitioner informed that the Town Council knew she had been a member of Esmond Concerned Citizens when it appointed her in the fall of 2006. In response to Commissioner Cheit, Staff Attorney DeVault stated that if the petitioner had not resigned from the group there would only be a problem under the Code if the group came before the Planning Board, as 5(f) would require her recusal. In response to Commissioner Kirby, the petitioner indicated that she does not have any outstanding debt or obligation to the group regarding its counsel fees from the prior litigation. The petitioner also stated that there has been no indication of whether or not they will come forward on the pending matter. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Catherine Lynn, a member of the Smithfield Planning Board.**

**The next advisory opinion was that of Steven Stycos, a Cranston School Committee member. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. The petitioner noted that the representation in the second paragraph of**

the discussion regarding the program team of supervisors is inaccurate. He clarified that the group has input but does not have control. Commissioner Murray inquired if there are any discussions or plans to expand Dorcas Place's offerings. The petitioner replied that those discussions are constantly ongoing, but not particularly in response to Cranston's withdrawal. He confirmed that there presently is a waiting list for their programs. In response to Commissioner Cheit, he stated that he never considered the Cranston School Department a competitor in terms of a waiting list. He noted that clients come and go among the agencies providing such services.

In response to Commissioner Cerullo, the petitioner advised that he has voted on the School budget for the past seven years, but this is the most specific it has gotten. Commissioner Cerullo inquired whether, if the School Committee de-funds the program, would money be freed up for which Dorcas Place could apply. He indicated that he abstained from a vote to eliminate \$200,000 in funding for adult education services in the Cranston Public Schools. The petitioner stated that it was his understanding that there was a proposal to commit the funds to the Construction Charter School in Cranston, but he did not know if that would happen or how the funds would be used there.

In response to Commissioner Harsch, the petitioner stated that he recused himself and sought the opinion after receiving an email



which accused him of having a conflict of interest. In response to Commissioner Kirby, the petitioner informed that he had asked in open session how the funding is broken down between city funds, fees and grants. In further response, the petitioner stated that if the program is de-funded the participants may or may not elect to go elsewhere. Commissioner Cerullo commented that it sounds like the Charter School could apply for grant funds and become a player in place of Dorcas Place. The petitioner indicated that it could happen. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was

**VOTED: To adopt draft Option A.**

**AYES: None.**

**NOES: James V. Murray, Ross Cheit, Barbara R. Binder, Deborah M. Cerullo SSND, J. William W. Harsch, Richard E. Kirby and James Lynch, Sr.**

Upon motion made by Commissioner Harsch and duly seconded by Commissioner Binder, it was unanimously

**VOTED: To adopt draft Option B.**

The next advisory opinion was that of Terence Fleming, a member of the Narragansett Planning Board. Staff Attorney DeVault presented

the Commission Staff recommendation. The petitioner was not present. Commissioner Cerullo requested more information regarding the decision to retain the monitoring agent. Staff Attorney DeVault replied that the Planning Board was not involved in the decision, which was that of the developer. In response to Commissioner Harsch, Staff Attorney DeVault advised that she believes the petitioner sought an opinion out of an abundance of caution. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Terence Fleming, a member of the Narragansett Planning Board.

Staff Attorney Gramitt requested clarification regarding language corrected by the petitioner in the earlier opinion issued to Steven Stycos. Chair Lynch and Legal Counsel confirmed the Commission's intent to remove the word "not" so that page two reflects that the group has input, but not control.

At approximately 10:16 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Kirby, it was unanimously

**VOTED:** To go into Executive Session pursuant to R.I. Gen. Laws § 42-46- 5(a)(2) and (4), to wit:

**a.) Motion to approve minutes of Executive Session held on April 8, 2008.**

**b.) In re: Deborah A. Fellela,  
Complaint No. 2008-2**

**c.) Status Update:**

**William V. Irons v. Rhode Island Ethics Commission,  
Superior Court C.A. No. 07-6666**

**d.) Motion to return to Open Session.**

**The Commission reconvened in Open Session at approximately 11:00 a.m. The next order of business was a Motion to Seal minutes of the Executive Session held on May 6, 2008. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on May 6, 2008.**

**Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved the minutes of the April 8, 2008 Executive Session; 2) dismissed Complaint No. 2008-2, In re: Deborah A. Fellela, for failure to allege sufficient facts to support a knowing**

and willful violation of the Code of Ethics; and 3) received a status update in *William V. Irons v. Rhode Island Ethics Commission*, Superior Court C.A. No. 07-6666.

The next order of business was Discussion regarding withdrawal of the 1993 Commission Policy Regarding Initiation of Preliminary Investigations. Senior Staff Attorney D'Arezzo informed that, upon adopting Regulation 12001, Preliminary Investigations, in December 1999, the Commission never took formal action to withdraw an earlier policy governing the initiation and conduct of preliminary investigations. She suggested that the Commission take such action at this time for purposes of clarity. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cerullo, it was unanimously

**VOTED:** To withdraw the Commission's 1993 Policy Regarding Initiation of Preliminary Investigations and Use of Investigative Subpoenas in Preliminary Investigations.

The next order of business was Discussion regarding the Search for Legal Counsel. Senior Staff Attorney D'Arezzo advised that the meeting materials include the prior advertisements placed in the *Providence Journal* and *Rhode Island Lawyers Weekly*, which could be updated at their direction. She stated that the notice would reflect that the Commission is an E-Verify participant. She noted that in prior searches, a Commission subcommittee has reviewed

applications, conducted interviews and made recommendations to the full Commission. She stated that if the Commission were to proceed in the same manner, it would have the option of accepting the subcommittee's recommendation or conducting a final interview before the full Commission. She indicated that the Staff will provide administrative assistance to facilitate the process.

Chair Lynch asked Commissioner Binder to head a Personnel Subcommittee which would report back to the full Commission with its recommendation. He asked Commissioners Cerullo and Harsch to serve and asked if there were any other volunteers. Commissioner Murray expressed that he would like to serve. Chair Lynch directed the Subcommittee members to coordinate the process with Commission Staff after the meeting.

The next order of business was the Director's Report. Executive Director Willever advised that there are four complaints and five advisory opinions pending. He stated that the Commission received one formal APRA request since the last meeting, which is pending as the Staff works to provide the information requested. He noted that he and members of the Staff met with the State Personnel Administrator yesterday to discuss the Commission's participation in the new E-Verify program, as well as other issues affecting the Commission. Director Willever reported that Staff Attorney Gramitt recently presented an ethics workshop in the Town of Burrillville. He also expressed his appreciation of the work performed by the

**Commission's Administrative Staff.**

**At approximately 11:15 a.m., upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**Ross Cheit**  
**Secretary**